

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CIVIL NO. 1:06CV191

WYNDHAM VACATION RESORTS,)
INC., f/k/a FAIRFIELD RESORTS, INC.,)
Plaintiff,)
vs.)
FAIRFIELD MOUNTAINS PROPERTY)
OWNERS ASSOCIATION, INC.,)
Defendant.)

)

O R D E R

THIS MATTER is before the Court on motion of the Defendant, Fairfield Mountains Property Owners Association, Inc., for an Order to modify the preliminary injunction as to signage pending final ruling by the Court on the parties' motions for summary judgment and/or upon trial. Pending final ruling on the merits, the Defendant requests, and the Plaintiff consents, to a modification of the preliminary injunction as to signage as follows:

1. The preliminary injunction that was previously entered August 29, 2006, herein ordered that "the Defendant, its agents employees, and persons or entities acting in concert with the Defendant, are hereby

ENJOINED and PROHIBITED from removing, replacing, or modifying any existing signage at Fairfield Mountains."

2. Plaintiff has now limited the signs which it contends are subject to an easement to eight specific signs (hereafter "the Eight Signs") as identified in its responses to Interrogatory #9 propounded by Defendant to Plaintiff A copy of that interrogatory response is attached hereto as Exhibit A and incorporated herein by reference. Plaintiff does not seek to enforce rights it contends it has as to any signs on POA property other than these Eight Signs.

3. As to the Eight Signs, only five signs (Signs #2, 3, 5, 6, and 8) remain at issue. The POA acknowledges that there is a recorded easement in favor of Plaintiff which covers Sign #1, and does not dispute the easement as to that particular sign. The POA asserts no rights with respects to Signs #4 or 7, as they are not on POA Property.

4. The Parties agree that the scope of the preliminary injunction should be limited to Signs 2, 3, 5, 6 and 8 pending final ruling in this matter.

It appearing to the Court that the Preliminary Injunction previously entered herein is broader than necessary, and that Plaintiff consents to the

modification of the preliminary injunction as set forth hereinafter,

IT IS, THEREFORE, ORDERED that the motion to modify the preliminary injunction is **ALLOWED**, and the first decretal paragraph of the preliminary injunction entered on August 29, 2006, stating in pertinent part that "the Defendant, its agents, employees, and persons or entities acting in concert with the Defendant, are hereby ENJOINED AND PROHIBITED from removing, replacing, or modifying any existing signage at Fairfield Mountains," is hereby **MODIFIED AND REPLACED** as follows: "the Defendant, its agents, employees, and persons or entities acting in concert with the Defendant, are hereby ENJOINED AND PROHIBITED from removing, replacing, or modifying Signs 2, 3, 5, 6, and 8 identified on Exhibit A hereto."

IT IS FURTHER ORDERED that the balance of the Preliminary Injunction entered August 29, 2006, shall remain in full force and effect until further Order of this Court.

Signed: May 22, 2007



Lacy H. Thornburg
United States District Judge



CONSENTED TO BY:

/s/ Pamela S. Duffy

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EXHIBIT A

9. Identify all signs by location and description (e.g. a statement of what words appear on the sign) which you contend are subject to the alleged easement as described in Paragraph 11 of the Amended Complaint.

RESPONSE:

1. First Entrance Sign at first golf course One Sided
IS feet wide by 7.5 feet **high**
"Fairfield Mountains"
2. **Directional Sign**
One Sided
4 feet wide by 6 feet **high**
"Fairfield Mountains Registration Next Left"
3. **Directional Sign**
One sided
4 feet wide by 6 feet **high**
"Fairfield Mountains; Welcome to Apple Valley; Apple Valley Villas; Maple Ridge Townhomes; Bent Creek Townhomes; Stables Closed/Open" (Stables portion subsequently removed).
4. **Directional Sign**
Two Sided
4 feet wide by 6 feet **high** "Fairfield
Mountains 1 Mile"
- S. Directional Sign to Realty Office
Two Sided
15 feet wide by 7.5 feet **high**
"Fairfield **Mountains** Realty; Apple Valley Villas; Maple Ridge; Bent Creek"
6. **Directional Sign**
One Sided
4 feet wide by 6 feet **high**
"Fairfield **Mountains** 1/2 Mile"
Second Entrance Sign at second golf course Two
7. Sided
15 feet wide by 7.5 feet **high**
"Fairfield **Mountains** Welcomes You"

8. Third Entrance Sign at Security Gate Two
Sided
15 feet wide by 7.5 feet high
"Fairfield Mountains A Resort **Community**"